

US Memorandum of Understanding on fight against online piracy

Kluwer Copyright Blog
August 22, 2011

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Please refer to this post as: Johan Axhamn, 'US Memorandum of Understanding on fight against online piracy', Kluwer Copyright Blog, August 22, 2011, <http://copyrightblog.kluweriplaw.com/2011/08/22/us-memorandum-of-understanding-on-fight-against-online-piracy/>

In a recently announced Memorandum of Understanding (MoU) with music and film industry associations, U.S. Internet service providers (ISPs) have agreed to take voluntary action against online piracy. In essence, the MoU establishes a multi-stage model ("graduated response") that begins with email alerts, and which may end up with bandwidth reductions or limitations in web accessibility. The model does not, however, include a possibility to shut down an internet connection. The model includes safeguards for the holder of the internet connection that is claimed to be used in carrying out the unlawful activities. According to the MoU, the parties jointly establish an organization, [Center for Copyright Information](#), which will focus on educating the public about the importance of copyright protection and lawful ways to obtain movies, television shows and music online. The Center will also help to develop and confirm "best-practices" for the new multi-stage model. The MoU is announced at a time when the call for increased accountability and transparency in the activities of internet users as regards online piracy is brought to attention at the highest international level in the G8, the [World Intellectual Property Organization](#) and the [Internet Governance Forum](#). It is also contemporary with political and legislative trends in some of the EU member states, such as France, the UK and Denmark. At EU level, the European Commission has recently stated that it intends to identify ways to combat infringements of IPR via the internet more effectively. According to the Commission, such activities could include amendments to the [IPR Enforcement Directive 2004/48/EC](#). The Commission holds that such measures should have as their objective "tackling the infringements at their source" and, to that end, "foster cooperation of intermediaries", such as internet service providers, while being "compatible with the goals of broadband policies and without prejudicing the interests of endconsumers." Recent efforts by the Commission to reach agreement between right holders and ISPs - similar to the US MoU - has, however, stranded due to "fundamental differences of opinion" between the parties.

A review of the said directive is expected in spring 2012. Considering the stranded discussion between ISPs and right holders, it will be very interesting to see whether Commission deems it necessary to move forward with legislative action. Such legislative action could aim at giving the ISPs enough incentive to cooperate in measures against online piracy and to give legal certainty to the design of such measures.